

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

STOCKTON UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2013050798

ORDER GRANTING MOTION TO  
AMEND COMPLAINT

On May 21, 2013, Attorneys Dan Torres and Roberta S. Savage representing Parent and Student (Student) filed with the Office of Administrative Hearings (OAH) a Due Process Hearing Request (complaint), naming the Stockton Unified School District (District). This matter is currently scheduled for hearing beginning on September 9, 2013. On August 26, 2013, Student filed a Motion to Amend along with an amended complaint. On August 27, 2013, Attorney S. Diane Beall filed, on behalf of the District, an opposition to Student's motion to amend.

APPLICABLE LAW

An amended complaint may be filed when either (a) the other party consents in writing and is given the opportunity to resolve the complaint through a resolution session, or (b) the hearing officer grants permission, provided the hearing officer may grant such permission at any time more than five (5) days prior to the due process hearing. (20 U.S.C. §1415(c)(2)(E)(i).) The filing of an amended complaint restarts the applicable timelines for the due process hearing. (20 U.S.C. §1415(c)(2)(E)(ii).)

DISCUSSION

Student seeks to amend his complaint to include additional claims during the 2012-2013 school year, to add claims prior to May 2011, and to identify additional remedies. Specifically, Student now alleges that in addition to his emotional disturbance, he also has learning disabilities in the areas of reading, writing and mathematics which qualify him for special education services. Student alleges he became aware of these additional claims for eligibility based upon an independent assessment completed in August of 2013. Student claims this independent assessment indicates that the District should have been on notice that he had a learning disability as early as his elementary school years, and Student alleges that

he is now entitled to bring a claim that prior to May 2011, the District denied him a free appropriate public education (FAPE) by failing to assess him for special education. Finally, Student additionally alleges the District procedurally and substantively denied him a FAPE when it failed to provide him a copy of its partially completed November 2012 assessment prior to July 2013.

The District contends that Student should have included all of his proposed amended allegations within his initial complaint as none of the additional allegations constitute “new developments” despite Student’s recently acquired independent assessment. While it may be preferable that a party plead all contentions within one complaint, there is no requirement that this occur. Additionally, the District’s own failure to provide Student, pursuant to his initial records request, with its partial assessment completed in November of 2012, has, in part, resulted in Student’s motion to amend. While it is understandable that the District wishes to proceed to hearing expeditiously, it is equally important to attempt to adjudicate all issues during the same proceeding. If Student’s motion to amend is denied, Student is likely to file a separate complaint to address his additional allegations.

Student’s motion to amend is timely and is granted. When Student knew or had reason to know that he may be eligible for special education services based upon a specific learning disability is a factual issue to be determined at hearing. The amended complaint shall be deemed filed on the date of this order. All applicable timelines shall be reset as of the date of this order. OAH will issue a scheduling order with the new dates.

#### ORDER

1. Student’s motion to amend is granted. The amended complaint shall be deemed filed on the date of this order.
2. All applicable timelines shall be reset as of the date of this order. OAH will issue a scheduling order with the new dates.

Dated: August 28, 2013

/s/

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THERESA RAVANDI  
Administrative Law Judge  
Office of Administrative Hearings